

B 104  
(Rev.2/92)

**ADVERSARY PROCEEDING COVER SHEET**  
(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER  
(Court Use Only)

**PLAINTIFFS**  
IRMA LUZ CORTES CUEVAS

**DEFENDANTS**  
FIRST BANK  
PO BOX 9146  
SAN JUAN, PR 00908-0146

**ATTORNEYS** (Firm Name, Address, and Telephone No.)  
JUAN O. CALDERON LITHGOW  
PO BOX 1710  
VEGA BAJA, PR 00694-1710  
TEL:787-858-5476 FAX:787-858-5476

**ATTORNEYS** (If Known)

**PARTY** (Check one box only) ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 U.S. NOT A PARTY

**CAUSE OF ACTION** (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  
**CRAMDOWN, VALUATION OF COLLATERAL AND DETERMINATION OF EXTENT OF THE LIEN**

**NATURE OF SUIT**  
(Check the one most appropriate box only)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> 454 To Recover Money or Property   | <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan                                  | <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action |
| <input checked="" type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property    | <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523  | <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court              |
| <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property | <input type="checkbox"/> 434 To obtain an injunction or other equitable relief  | <input type="checkbox"/> 499 Other (specify)  |
| <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727   | <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan |   |

**ORIGIN OF PROCEEDINGS** (Check one box only.) ☒ 1 original Proceeding ☐ 2 Removed Proceeding ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another Bankruptcy Court

☐ **CHECK IF THIS A CLASS ACTION UNDER F.R.C.P. 23**

**DEMAND**

NEAREST THOUSAND  
\$ 0.00

**OTHER RELIEF SOUGHT**  
VALUATION OF COLLATERAL

☐ **JURY DEMAND**

**BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES**

**NAME OF DEBTOR**  
IRMA LUZ CORTES CUEVAS

**BANKRUPTCY CASE NO.**  
09-07509 SEK

**DISTRICT IN WHICH CASE IS PENDING**  
District of PUERTO RICO

**DIVISIONAL OFFICE**

**NAME OF JUDGE**  
HON. SARA DE JESUS

**RELATED ADVERSARY PROCEEDING (IF ANY)**

**PLAINTIFF**

**DEFENDANT**

**ADVERSARY PROCEEDING NO.**

**DISTRICT**

**DIVISIONAL OFFICE**

**NAME OF JUDGE**

**FILING FEE**

(Check one box only)

☐ **FEE ATTACHED**

☒ **FEE NOT REQUIRED**

☐ **FEE IS DEFERRED**

**DATE**  
February 16, 2010

**PRINT NAME**  
JUAN O. CALDERON LITHGOW, ESQ  
USDSC 205607

**SIGNATURE OF ATTORNEY (OR PLAINTIFF)**

/s/ Juan O. Calderon Lithgow USDSC 205607

IN THE UNITED STATES BANKRUPTCY COURT

District of Puerto Rico

COMPLAINT

IN RE:

IRMA LUZ CORTES CUEVAS

Debtor

IRMA LUZ CORTES CUEVAS  
Plaintiff

vs.

FIRST BANK  
Defendant

ALEJANDRO OLIVERAS RIVERA,  
Trustee

Case No. 09-07563 SEK

CHAPTER 13

ADVERSARY NO.

11 U.S.C. § 506 (a) ; CRAMDOWN,  
VALUATION OF COLLATERAL, AND  
DETERMINATION OF EXTENT OF LIEN

COMPLAINT TO DETERMINE VALUE OF LIEN , AND TO PROVIDE FOR THE  
SURRENDER OF TITLE TO DEBTOR  
UPON FULL PAYMENT OF SECURED PORTION OF CLAIM

TO THE HONORABLE COURT:

Come now the Debtor, by her attorney, and respectfully states and prays as follows

INTRODUCTION

1. This is a complaint seeking a judgment determining the value of a collateral, and to provide for the surrender of title to the collateral upon full payment of secured portion of the claim. This complaint seeks to strip defendant's lien to the extent of the value of property over which the lien is attached pursuant to 11 U.S.C. § 506(a) and 11 U.S.C. § 1325(a)(5)(B)(ii).

JURISDICTION OF THIS COURT

2. Jurisdiction is invoked under 28 United States Code U.S.C. § 157 (a)(b)(1) and § 1334. This is a core proceeding.

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COMPLAINT

VENUE

3. Venue is proper in this District Court under 28 U.S.C. §1408 & §1409, inasmuch as all the events or omissions giving rise to the claims of the captioned case occurred within the territory of this jurisdictional district.

PARTIES

4. IRMA LUZ CORTES CUEVAS, hereinafter debtor, is the petitioner in a Chapter 13 case under the Bankruptcy Code, Case No. 09-07503 SEK
- Defendant, FIRST BANK, hereinafter designated as FIRST BANK, is a secured creditor in this case.

FACTS

5. The Debtor filed the instant voluntary petition under chapter 13 of the Bankruptcy Code on July 16, 2009.
6. Debtor has a property interest in a 2008 Pontiac Solstice motor vehicle which is subject to a lien arising out of a duly registered conditional sale agreement in favor of FIRST BANK. The conditional sale agreement was originated on August 2, 2008.
7. FIRST BANK filed claim number 1 by an amount of \$36,282.20.
- Detail of money involved in the initial transaction as per claim number1 is as follows:

Sale Price	\$36,995.00
Insurance	\$3,621.00
Financing Declaration	\$10.00
Inscription charges	\$185.00
Sale Total	\$40,811.00
Down Payment	\$5,100.00
Amount Financed	\$35,711.00
Interes Charged	\$19,729.00
Principal + interest	\$55,440.00

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COMPLAINT

Money expected by creditor to be received as per claim number 1 is as follows:

Payoff-claimed + interest of \$16,598.80	\$52,880.80	
Rate	15.95%	
Length	5 years Plan	
Monthly if paid in plan	\$881.35	

Market value of vehicle and interest accrued at 6.89% as proposed in cram down

VALUE OF COLLATERAL	INTEREST PAID DURING LENGTH BY YEAR OF PLAN	INTEREST RATE	CUMMULATIVE INTEREST
\$10,810.00			
1ST YEAR	\$596.61	6.89%	\$596.61
2ND YEAR	\$478.73		\$1,075.34
3RD YEAR	353.58		\$1,428.91
4TH YEAR	\$220.70		\$1,649.62
5TH YEAR	\$79.64		\$1,729.26
TOTAL INTEREST	\$1,729.26		
	VALUE + ACCRUED INTEREST	\$12,539.26	

Impact of Cram-down on debtor if vehicle is paid within the plan

Payoff-Market value + interest	\$12,539.26	
Rate	6.89%	
Length	5 years plan	
Monthly (approximately)	\$208.99	

8. The "private sale" value of the 2008 Pontiac Solstice is \$12,635.00.00 as per Kelly Blue Book (<http://www.kbb.co>). The vehicle is in excellent condition and its mileage is approximately 25,000. Copy of the recently issued internet printout, which can be freely obtained, is attached to this Motion and marked Exhibit I.
9. The value of the collateral (\$10,810.00) is less than the total amount of the claim filed by creditor (claim number 1 by \$36,282.20).
10. The Chapter 13 plan filed by the debtor, dated September 4, 2009, copy of which is attached to this Motion and marked Exhibit II, proposes, with respect to FIRST BANK's claim, to pay the value of the collateral in the amount of \$10,810.00, and provide adequate protection to this creditor by means of interest at a rate of 6.89% per annum, to ensure present value.

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COMPLAINT

11. The plan provides also for insurance to be provided to FIRST BANK directly by the debtor through TRIPLE S PROPERTY INSURANCE for the last two months of extension of the original contract.
12. Other provisions in the plan for this creditor are that the Trustee will pay this Claim ahead of other secured creditors as adequate protection due to accelerated depreciation of the Collateral and as additional adequate protection, pre-confirmation disbursements up to confirmation of the plan upon filing of the claim, in the amount of \$116.00 per month.
13. FIRST BANK will receive pro rata disbursements for the unsecured balance of such claim as it is filed.
14. The plan also provides that title to the collateral shall be surrendered to the debtor upon payment in full by the Trustee of the secured portion of FIRST BANK's Claim.
15. The prime rate on the date the petition was filed was of 5.26%. A quote of the current prime rate can be obtained from [www.bankrate.com/brm/ratewatch/leading-rates.asp](http://www.bankrate.com/brm/ratewatch/leading-rates.asp). A quote and a historical list of the prime rate can be obtained from the internet site for the U.S. Federal Reserve Board at [www.economagic.com/em-cgi/data.exe/fedbog/prime](http://www.economagic.com/em-cgi/data.exe/fedbog/prime).
16. The debtor is exercising the "cram down" option for which 11 U.S.C. §1325 (a)(5)(B) provides, by paying the creditor the present value at 6.89% per annum (5.26% plus 1.5% as a risk factor) of the total amount of the value of the collateral during the life of the plan, while the creditor will retain the lien until the secured portion of the claim is paid in full.
17. The value of the allowed secured claim is governed by 11 U.S.C. § 506 (a) which provides that "(a)n allowed claim of a creditor secured by a lien on property in which the estate has an interest, ..., is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, ..., and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim.
18. In *Associates Commercial Corporation v. Elray Rash, et ux.*, 520 U.S. 953, 117 S. Ct. 1879, 138 L. Ed. 148 (1997), it was clearly stated that the appropriate standard for



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COMPLAINT

valuation is replacement cost:

"In sum, under §506(a), the value of property retained because the debtor has exercised the §1325(a)(5)(B) "cram down option is the cost the debtor would incur to obtain a like asset for the same "proposed... use"."

19. In Till v. SCS Credit Corp. 124 S Ct. 1951, 2004 U.S. LEXIS 3385, Decided May 17, 2004, the Supreme Court established that in order to allow secured creditors to receive deferred installments that would equal the allowed secured claim's present value, courts must choose a rate (of interest) high enough to compensate a creditor for its risk but not so high as to doom the bankruptcy plan.

20. The balance of any claim of FIRST BANK is allowable only as unsecured claim.

**WHEREFORE**, debtor respectfully prays that this court:

1. Determines that the method of valuation specified above is appropriate,
2. Value the interest of FIRST BANK in the automobile at \$10,810.00;
3. Determine the allowed secured claim of FIRST BANK. to be \$10,810.00 pursuant to 11 U.S.C. § 506(a) with the balance allowed as an unsecured claim only;
4. Determine that the 6.89% rate of interest offered by debtor is adequate to compensate creditor for the present value of its allowed secured claim plus a reasonable risk factor;
5. Declare and Order FIRST BANK to surrender title to the automobile to debtor upon payment in full of its allowed secured claim through the plan;
6. Allow the remaining difference between FIRST BANK's total claim and the value of the collateral as an unsecured claim.

Respectfully submitted, in San Juan, Puerto Rico, this February 10, 2010

/s/ Juan O. Calderon Lithgow

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## 2008 Pontiac Solstice Convertible 2D

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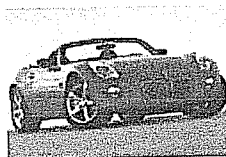
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### BLUE BOOK® PRIVATE PARTY VALUE



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Condition	Value
Excellent	\$10,810
Good	\$10,010
Fair	\$8,910

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VIN:

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### Vehicle Highlights

**Mileage:** 50,000  
**Engine:** 4-Cyl. 2.4 Liter  
**Transmission:** 5 Speed Manual  
**Drivetrain:** RWD

### Selected Equipment

#### Standard

Power Steering  
Tilt Wheel  
AM/FM Stereo

MP3 (Single CD)  
OnStar  
Dual Front Air Bags

### Change Equipment

Alloy Wheels

### Blue Book Private Party Value

Kelley Blue Book Private Party Value is the amount a buyer can expect to pay when buying a used car from a private party. The Private Party Value assumes the vehicle is sold "As Is" and carries no warranty (other than any remaining factory warranty). The final sale price may vary depending on the vehicle's actual condition and local market conditions. This value may also be used to

derive Fair Market Value for insurance and vehicle donation purposes.

## Vehicle Condition Ratings

Check Vehicle Title History

### Excellent

EXCELLENT

\$10,810

- Looks new, is in excellent mechanical condition and needs no reconditioning.
- Never had any paint or body work and is free of rust.
- Clean title history and will pass a smog and safety inspection.
- Engine compartment is clean, with no fluid leaks and is free of any wear or visible defects.
- Complete and verifiable service records.

Less than 5% of all used vehicles fall into this category.

### Good

GOOD

\$10,010

- Free of any major defects.
- Clean title history, the paints, body, and interior have only minor (if any) blemishes, and there are no major mechanical problems.
- Little or no rust on this vehicle.
- Tires match and have substantial tread wear left.
- A "good" vehicle will need some reconditioning to be sold at retail.

Most consumer owned vehicles fall into this category.

### Fair

FAIR

\$8,910

- Some mechanical or cosmetic defects and needs servicing but is still in reasonable running condition.
- Clean title history, the paint, body and/or interior need work performed by a professional.
- Tires may need to be replaced.
- There may be some repairable rust damage.

### Poor

POOR

N/A

- Severe mechanical and/or cosmetic defects and is in poor running condition.
- May have problems that cannot be readily fixed such as a damaged frame or a rusted-through body.
- Branded title (salvage, flood, etc.) or unsubstantiated mileage.

Kelley Blue Book does not attempt to report a value on a "poor" vehicle because the value of these vehicles varies greatly. A vehicle in poor condition may require an independent appraisal to determine its value.

\* Puerto Rico 2/16/2010

## Accurate Condition Appraisal

Change Condition

Accurately appraising the condition of a vehicle is an important aspect in determining its Blue Book value. Taking our 16 question condition quiz will ensure you know the correct condition rating.

## NEXT STEP: SEARCH LOCAL LISTINGS

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE: IRMA LUZ CORTES CUEVAS

BK. CASE # 09-07503 SEK

DEBTOR(S)

CHAPTER 13

CHAPTER 13 PAYMENT PLAN

**NOTICE:** • The following plan contains provisions which may significantly affect your rights. You should read this document carefully and discuss it with your attorney. When confirmed, the plan will bind the debtor and each creditor to its terms. Objections must be filed in writing with the Court and served upon the debtor(s), debtors' counsel, the Trustee and any other entity designated by the Court, at the 341 meeting of creditors or not less than twenty (20) days prior to the scheduled confirmation hearing. For post confirmation Plan Modifications, objections must be filed and notified in the same manner within twenty (20) days from its notification. • This plan does not allow claims. Any party entitled to receive disbursements from the Trustee must file a proof of claim. The Trustee will pay the allowed claims, as filed, provided for in the plan, unless disallowed or expressly modified by the Court and / or the terms of the plan. If no claim is filed, the Trustee will not pay a creditor provided for in the plan, unless ordered by the Court. If the Trustee is to make POST-PETITION REGULAR MONTHLY PAYMENTS to any Secured obligation, then a proof of claim must be filed including the following information: account number, address, due date and regular monthly payment. Secured creditor must notify any change in the monthly payment, three (3) months prior to the effective date of new payment. Those post-petition monthly payments will not exceed the life of the plan. • See the notice of commencement of case for 341 meeting date and claims bar date, the latter is the date by which a proof of claim must be filed in order to participate of the plan distribution.

- The future earnings of the Debtor(s) are submitted to the supervision and control of the Trustee and the Debtor(s) shall make payments to the Trustee:  
☒ directly ☐ by payroll deductions, as hereinafter provided in the PAYMENT PLAN SCHEDULE.
- The Trustee shall distribute the funds so received as hereinafter provided in the DISBURSEMENT SCHEDULE.
- ☒ The Confirmation Order will not vest property of the Estate on Debtor(s) until the Order discharging Debtor(s) is entered.

PLAN DATED: September 4, 2009

☒ PRE ☐ POST-CONFIRMATION

AMENDED PLAN DATED:

FILED BY ☒ DEBTOR ☐ TRUSTEE ☐ UNSECURED CREDITOR

I. PAYMENT PLAN SCHEDULE

\$	200.00	x	60	= \$	12,000.00
\$	0.00	x	0	= \$	0.00
\$	0.00	x	0	= \$	0.00
\$		x		= \$	
\$		x		= \$	
TOTAL =				60	\$ 12,000.00

Additional Payments:

\$ 1,500.00 to be paid as a LUMP SUM within with proceeds to come from

☐ Sale of property identified as follows:

☒ Other: ADDITIONAL PAYMENTS WILL COME FROM TAX REIMBURSEMENT AT A RATE OF \$300.00 PER YEAR.

Periodic Payments to be made other than and in addition to the above.

\$ x = \$  
To be made on:

PROPOSED PLAN BASE: \$ 13,500.00

II. ATTORNEY'S FEES

To be treated as a § 507 Priority, and paid before any other creditor and concurrently with the Trustee's fees, unless otherwise provided:

a. Rule 2016(b) Statement:	\$ 3,000.00
b. Fees Paid (Pre-Petition):	(\$ 126.00)
c. R 2016 Outstanding balance:	(\$ 2,874.00)
d. Post Petition Additional Fees:	\$ 0.00
e. Total Compensation:	\$ 3,000.00

Signed: /s/ IRMA LUZ CORTES CUEVAS  
DEBTOR

JOINT DEBTOR

III. DISBURSEMENT SCHEDULE SEQUENCE

A. SECURED CLAIMS:

☐ Debtor represents that there are no secured claims.

☒ Secured creditors will retain their liens and shall be paid as follows:

☐ ADEQUATE PROTECTION Payments: Cr. \$ 0.00

☒ Trustee will pay secured ARREARS:

Cr. BPPR	Cr. FIRSTBANK	Cr.
Acct. XXXXXXXXXXXX6715	Acct. XXXXXXXXXXXX0845	Acct.
\$ 1,225.00	\$ 2,355.00	\$

☐ Trustee will pay REGULAR MONTHLY PAYMENTS:

(please refer to the above related notice, for important information about this provision)

Cr.	Cr.	Cr.
Acct.	Acct.	Acct.
Monthly Pymt.\$	Monthly Pymt.\$	Monthly Pymt.\$

☐ Trustee will pay IN FULL Secured Claims:

Cr.	Cr.	Cr.
\$	\$	\$

☐ Trustee will pay VALUE OF COLLATERAL:

Cr.	Cr.	Cr.
\$	\$	\$

☐ Secured Creditor's interest will be insured. INSURANCE POLICY will be paid through plan:

Cr.	Ins. Co.	Premium: \$
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(Please indicate in "Other Provisions" the insurance coverage period)

☐ Debtor SURRENDERS COLLATERAL TO Lien Holder:

☒ Debtor will maintain REGULAR PAYMENTS DIRECTLY to: BPPR & FISRT BANK

B. PRIORITIES. The Trustee will pay §507 priorities in accordance with the law [§1322 (a)(2)].

☐

C. UNSECURED PREFERRED: Plan ☐ Classifies ☒ Does not Classify claims

☐ Class A: ☐ Co-debtor Claims: ☐ Pay 100% ☐ "Pay Ahead"

☐ Class B: ☐ Other Class:

Cr.	Cr.	Cr.
\$	\$	\$

D. GENERAL UNSECURED NOT PREFERRED: (Case Liquidation Value = \$ 0.00)

☐ Will be paid 100% plus % Legal Interest. ☐ Will be paid Pro-Rata from any remaining funds

OTHER PROVISIONS:

ATTORNEY FOR DEBTOR: /s/ JUAN O. CALDERON-LITHGOW Phone: (787) 858-5476